

**BEFORE THE APPEALS BOARD
FOR THE
KANSAS DIVISION OF WORKERS COMPENSATION**

LISA GARCIA-ALDRICH)	
Claimant)	
VS.)	
)	Docket Nos.222,834 & 222,835
HALLMARK CARDS, INC.)	
Respondent)	
Self-Insured)	
AND)	
)	
ROYAL INSURANCE)	
Insurance Administrator)	

ORDER

Claimant appeals from an Award entered by Administrative Law Judge Brad E. Avery on November 17, 1998. The Appeals Board heard oral argument June 15, 1999.

APPEARANCES

Eugene C. Riling of Lawrence, Kansas, appeared on behalf of claimant. John David Jurcyk of Lenexa, Kansas, appeared on behalf of respondent, a qualified self-insured.

RECORD AND STIPULATIONS

The Appeals Board has considered the record and adopted the stipulations listed in the Award.

ISSUES

Docket No. 222,835 involves an alleged back injury on June 2, 1996. The ALJ found claimant failed to give timely notice of this accident and did not establish just cause for the failure. He denied benefits. On appeal, claimant disputes this finding. If the Board concludes notice was given or that there was just cause, the parties have stipulated claimant has a functional impairment of 7 percent but the following additional issues remain undecided:

1. Did claimant suffer personal injury by accident?
2. Did claimant's accidental injury arise out of and in the course of employment with respondent?

3. Did claimant make timely written claim for accidental injury on June 2, 1996?
4. Did claimant meet her burden of proving the extent of disability attributable to this accident?
5. Is claimant entitled to reimbursement for medical expenses?

Docket No. 222,834 involves an alleged low back injury on April 24, 1997. The ALJ found claimant suffered a temporary back injury on this date but no permanent disability. The issues on appeal are:

1. Did claimant suffer personal injury by accident?
2. Did claimant's accidental injury arise out of and in the course of employment?
3. Is claimant entitled to temporary total disability?
4. Is claimant entitled to future and unauthorized medical expense?
5. Is claimant entitled to reimbursement for medical expenses?
6. What is the nature and extent of claimant's disability and, more specifically, did claimant meet her burden of proving the extent of disability attributable to this alleged accident?

FINDINGS OF FACT AND CONCLUSIONS OF LAW

After reviewing the record and considering the arguments, the Appeals Board concludes the Award by the Administrative Law Judge should be affirmed.

Docket No. 222,835

With regard to Docket No. 222,835, the Appeals Board agrees with and affirms the finding by the ALJ that claimant did not give notice of her back injury within ten days as required by K.S.A. 44-520 and has not shown just cause for that failure. As a consequence, the claim must be denied. As the ALJ indicated, claimant notified her supervisor that she was having back problems but did so before she had gone to work on the alleged date of accident and suggested to her supervisor that it related to activities she did over the weekend away from work. Claimant did not relate the symptoms to work even when asked by her supervisor what had caused the problem. Claimant did not suggest a work-related cause until some 67 days after the accident and has not shown just cause for the failure to do so.

As to Docket No. 222,835, the Board agrees with and adopts as its own the findings and conclusions stated in the Award by the ALJ.

Docket No. 222,834

In this case, relating to an alleged back injury on April 24, 1997, the ALJ found that "claimant suffered only a temporary aggravation of her previous injury and that she did not suffer a personal injury by accident arising out of and in the course of her employment." This finding might be read to suggest the ALJ was concluding the injury did not arise out of and in the course of employment because it was only temporary. But the Board does not believe this is what the ALJ intended. Rather, the finding is understood only to mean: (1) claimant suffered a temporary injury, and (2) the temporary injury did not arise out of and in the course of employment. So understood, the Board agrees with and affirms the finding.

The facts establish that on April 24, 1997, claimant experienced a temporary, two-to-three minute, period of symptoms while standing at work talking to her husband who also worked for respondent. After this brief period, the symptoms receded and her condition returned to its normal state. From these facts, the Board concludes, as did the ALJ, claimant did not suffer personal injury by accident arising out of and in the course of her employment.

AWARD

WHEREFORE, it is the finding, decision, and order of the Appeals Board that the Award entered by Administrative Law Judge Brad E. Avery on November 17, 1998, should be, and the same is hereby, affirmed.

IT IS SO ORDERED.

Dated this ____ day of July 1999.

BOARD MEMBER

BOARD MEMBER

BOARD MEMBER

c: Eugene C. Riling, Lawrence, KS
John David Jurcyk, Lenexa, KS

LISA GARCIA-ALDRICH

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DOCKET NOS. 222,834 & 222,835

Brad E. Avery, Administrative Law Judge
Philip S. Harness, Director